

REMARKS

Claims 1–16 are pending and were rejected. Claims 1-2, 9-10 and 14 are amended no claims have been added or cancelled in this Reply. Accordingly, claims 1–16 remain pending. Reconsideration and withdrawal of the rejections of claims 1–16 are requested in view of the foregoing amendments and the following remarks.

Amendment to Claim 10

Claim 10 has been amended for clarity.

Amendment to Claim 14

Examiner noted that previous amendment to claim 14 failed to amend the phrase “machine” to the phrase “computer” at line 2 of claim 14. Claim 14 has been amended herin to address this inadvertent mistake.

Rejection of Claims 2 and 9 under § 112 2nd ¶

Claim 2 has been amended to correct a typographical error and properly recite “the output pixel.” Assignee respectfully requests the Examiner withdraw this rejection.

Claim 9 has been amended to recite “a constant factor” to further clarify that a constant number is raised to a power relative to the number of steps with which the sample spacing has been increased. For further clarification see Assignee’s Specification at ¶ 22 where it explains that the sample spacing (as shown in Figs. 4 and 5) is increased with each step (for example in accordance with 2 raised to the power n-1). Assignee respectfully requests the Examiner withdraw this rejection.

Rejection of Claims 1-10 under § 101

Claims 1-10 were rejected under 35 U.S.C. § 101 as allegedly not drawn to statutory subject matter. Claim 1 has been amended, as suggested by the Examiner, to recite “using a processor to perform.” Support for this amendment can be found at least at ¶ 17 of Assignee’s Specification as filed. Assignee respectfully requests the Examiner withdraw this rejection.

Rejection of Claims 1–16 under § 103

In responding to the Examiner's prior art rejections, Assignee here only justifies the patentability of the independent claims (i.e., claims 1, and 11). As the Examiner will appreciate, should these independent claims be patentable over the prior art, dependent claims would also necessarily be patentable. Accordingly, Assignee does not separately discuss the patentability of the dependent claims, although Assignee reserves the right to do so.

Claims 1-2, 5-8 and 11-12 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent Publication 2002/0159648 to Alderson et al. ("Alderson") in view of U.S. Patent No. 6,535,632 to Park et al. ("Park").

In rejecting claim 1 the Examiner asserts

Park teaches wherein a spatial relationship between the output pixel the plurality of pixels is determined by a step size of the primary kernel (Refer to column 14, line 44-46; specifically, "According to a 2-dimensional implementation embodiment, a step size along a first axis 114 is derived and a step size along a second axis 116 is derived.")

Office Action dated 26 January 2009 at p. 6.

In stating this, the Examiner apparently rightfully concedes that Alderson does not disclose "a spatial relationship between the output pixel the plurality of the pixels is determined by a step size of the primary kernel." However, Park is also silent as to this element. In particular, Park is silent as to "a step size of the primary kernel" because the step size disclosed in Park refers to a *searching algorithm*. The Examiner apparently relies on Park merely because Park uses the words "step size." Park's "step size" is fundamentally different from a step size of the primary kernel. The Examiner has taken Park's "step size" out of context because the surrounding sentences clearly state that the "step size" of Park is "to reduce the number of windows 112 that the template is compared with." Park at Col. 14 lns 42-43. Furthermore, Park discloses "[r]ather then (sic) **compare the template to every possible window of the search area 110**, the template 108 is moved along either or both of the first axis 114 and second axis 116 by the corresponding first axis step size or second axis step size." Park at Col. 14 lns 46-50 (emphasis added).

Because Park and Alderson, either alone or in combination, fail to disclose at least "a step size of the primary kernel" these references cannot disclose each and every limitation of

claim 1. Therefore, the Examiner has failed to present a legitimate *prima facie* case of obviousness as required under 35 U.S.C. § 103(a) and established Patent Office procedure.

Furthermore, independent claim 11 was rejected for the same rationale as independent claim 1 and the above arguments apply with equal force to independent claim 11. Each of claims 2, 5-8 and 12 depend from either claim 1 or 11 and are patentable over the cited art for at least the same reasons as the independent claims from which they depend. Assignee therefore respectfully requests the Examiner withdraw this rejection and issue a Notice of Allowance for claims 1, 2, 5-8 and 12.

Claims 3-4 and 13-14 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Alderson in view of Park and further in view of U.S. Patent No. 6,925,210 to Herf ("Herf").

Each of claims 3-4 and 13-14 depend from either claim 1 or 11 and are patentable over the cited art for at least the same reasons as the independent claims from which they depend. Assignee therefore respectfully requests the Examiner withdraw this rejection and issue a Notice of Allowance for claims 3-4 and 13-14.

Claims 9 and 15 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Alderson in view of Park and further in view of U.S. Patent Publication 2004/0051909 to Curry et al. ("Curry").

Each of claims 9 and 15 depend from either claim 1 or 11 and are patentable over the cited art for at least the same reasons as the independent claims from which they depend. Assignee therefore respectfully requests the Examiner withdraw this rejection and issue a Notice of Allowance for claims 9 and 15.

Claims 10 and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent Publication 2002/0159648 to Alderson et al. ("Alderson") in view of U.S. Patent Publication 2003/0113031 to Wal ("Wal").

Each of claims 10 and 16 depend from either claim 1 or 11 and are patentable over the cited art for at least the same reasons as the independent claims from which they depend. Assignee therefore respectfully requests the Examiner withdraw this rejection and issue a Notice of Allowance for claims 10 and 16.

Conclusion

Because Alderson and Park, either alone or in combination, do not teach or suggest each limitation of claim 1 and because Examiner gives no reason why one of ordinary skill in the art would modify Alderson or Park to provide these missing limitations, Alderson and Park cannot render claim 1 obvious. Claims 2–10 depend from claim 1 and therefore incorporate the limitations of claim 1. Independent claim 11 recites limitations similar to those discussed above with respect to claim 1, and claims 12–16 depend from claim 11. Therefore all pending claims are allowable for at least the reasons set forth above with respect to claim 1. Withdrawal of all pending rejections and a Notice of Allowance for these claims is therefore requested.

If, after considering this Reply, the Examiner believes that a telephone conference would be beneficial towards advancing this case to allowance, the Examiner is strongly encouraged to contact the undersigned attorney at the number listed.

Respectfully submitted,

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Date

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